

INTERNATIONAL COURT OF APPEAL (I.C.A.)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the
Qatar Motor and Motorcycle Federation (QMMF)
on behalf of its competitor, Barwa Rally Team,
against Decision N° 3
taken by the Panel of Stewards on 30 July 2009
concerning the Acropolis Rally of Greece 2009, counting towards
the 2009 FIA Production World Rally Championship**

Case 20/2009

Hearing of Tuesday 6 October 2009 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Me Laurent ANSEMI (Monaco), who was elected President, Mr Erich SEDELMAYER (Austria), Mr Robert LAGULHON (France), Mr Michael GRECH (Malta), and Mr Patrick RAEDERSDORF (Switzerland), met in Paris on Tuesday 6 October 2009 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Qatar Motor and Motorcycle Federation (QMMF) on behalf of its competitor Barwa Rally Team (“the Appellant”) against Decision N° 3 taken by the Panel of Stewards on 30 July 2009 to exclude car N° 50 of Barwa Rally Team from the Acropolis Rally of Greece 2009, on the grounds that its engine was not in conformity with its homologation form, in breach of Article 254 of Appendix J to the International Sporting Code (“the Contested Decision”), the Court has heard the statements and examined the arguments of the QMMF and of the FIA (“the Defendant”).

Attending the above hearing were:

on behalf of the QMMF and Barwa Rally Team:

Ms Marielou Cruz (QMMF Representative)
Mr Simon Taylor (Legal Representative)
Mr Ken Skidmore (Team Manager, Barwa Rally Team)
Mr David Lapworth (Technical Director, Prodrive)

for the FIA:

Mr Pierre de Coninck (Secretary General FIA Sport)
Mr Sébastien Bernard (Head of Legal Department FIA)
Mr Jacques Berger (Head of Technical Department FIA)

The parties presented written submissions and, at the hearing of 6 October 2009, set out oral arguments and replied to the questions put to them by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised by anyone.

REMINDER OF THE FACTS

1. During post-competition engine checks following the Acropolis Rally of Greece 2009 (the “Event”), which was run on 11-14 June 2009 and counts towards the FIA Production World Rally Championship, the FIA Technical Delegate Jérôme Toquet found that the crankshaft of car N° 50 of competitor Barwa Rally Team had been modified. His technical report dated 3 July 2009 states, among other things, the following:

Except for the crankshaft, all points checked proved to be in conformity with:

- Article 254 (Group N) of Appendix J
- The homologation form of the Subaru Impreza WRX STI (2007) – GRB (homologation form n° N-5714

[...]

Conclusion:

- The crankshaft that was fitted to the engine of car n°50 had been machined and lightened in many areas.
- This would seem to be in contradiction with Article 254 of Appendix J.

2. Article 254(4) of Appendix J to the International Sporting Code (Specific Regulations for Production Cars - Group N) stipulates the following:

ARTICLE 4 : MODIFICATIONS AND ADJUNCTIONS ALLOWED OR OBLIGATORY

All the modifications which are not allowed by the present regulations are expressly forbidden. The only work which may be carried out on the car is that necessary for its normal servicing, or for the replacements of parts worn through use or accident.

The limits of the modifications and fittings allowed are specified hereinafter.

Apart from these, any part worn through use or accident can only be replaced by an original part identical to the damaged one.

The cars must be strictly series production models identifiable by the homologation form data.

3. On the basis of the above-mentioned report, the Stewards, after having heard the competitor’s representatives, decided on 30 July 2009 that the engine of car N° 50 was not in conformity with Article 254 of Appendix J and that it should therefore be excluded from the final results of the Event.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

4. The Appellant lodged an appeal with the Secretariat of the ICA on 31 July 2009, after having notified its intention to appeal within the hour of the decision.
5. The Appellant contends that the Court should:
 - allow its appeal and find that no contravention of Article 254 of Appendix J has taken place;
 - reinstate competitor N° 50 in the final results of the Event;

- in the alternative, allow its appeal against the penalty of exclusion, and reinstate competitor N° 50 in the final results of the Event and impose instead a reprimand and/or reasonable financial penalty.
6. The FIA, in its submission dated 28 September 2009, requests that the Court:
- reject all the demands, purposes and submissions of the Appellant, as they are unfounded;
 - judge and declare that the decision taken by the Stewards must in no way be modified or cancelled and that it is confirmed in its entirety.

ADMISSIBILITY

7. The Court acknowledges that this appeal was filed in a timely manner and that it is in conformity with the Rules of Procedure the FIA International Court of Appeal.
8. The Court also finds that it has jurisdiction in the matter.
9. Therefore, the Court declares the appeal admissible.

ON THE PROCEDURE

Production of evidence at the hearing

10. The parties, after mutual agreement, have requested to submit to the Court various pieces of evidence during the hearing, in breach of the last paragraph of Article 19 of the ICA Rules of Procedure.
11. These pieces of evidence consisted in this case of :
- a technical document concerning the crankshaft sent by Mr Yoshizawas (Subaru), dated 20 July 2009, submitted by the FIA – it must be noted that, due to its confidential nature, the sender required that it be returned to him after the parties and the Court have examined it ;
 - an e-mail from Mr Shigeo Sugaya (Subaru), dated 5 October 2009, to Mr Richard Taylor, submitted by the Appellant, relating to methods of machining the crankshaft ;

Conclusions of the Court

12. Considering the agreement of the parties, the President of the hearing authorized the production of the evidence in keeping with adversarial principles and in accordance with Article 20 of the Rules of Procedure of the Court.

ON THE SUBSTANCE

First Plea – Regarding the compliance with Article 254 of Appendix J to the International Sporting Code

a) Arguments of the parties

13. The Appellant acknowledges that its engine supplier, Prodrive, machined the crankshaft of car N° 50 when the engine was first built as part of the preparation process known as “blue printing”, and again during a later rebuilt following use of the engine in competition, but claims that such machining is consistent with Article 254 of Appendix J as it is carried out in the context of “normal servicing” of the car, provided the dimensions and limits set out in the homologation papers are respected, which was the case here. Therefore, the Stewards have wrongly concluded that the machining under appeal was carried out in breach of Article 254 of Appendix J. The Appellant adds that this interpretation is widely shared in the motor sports industry and expressly refers to materials reflecting the views of various other engine tuners.
14. The Appellant further submits that the Stewards’ interpretation of Article 254 represents a fundamental change of the customary and historical interpretation of this provision, and that such a change, which would have far-reaching negative implications, should only be made using the customary formal procedures for amending the regulations.
15. The FIA contests the Appellant’s interpretation and defends the conclusions of the Contested Decision. It submits that the Appellant openly confirms that the objective of “blue printing” is to improve the performance of the engine. Therefore, this practice cannot be in accordance with the elementary regulatory principles that govern the Group N category. The basis of these principles is that the parts used must remain strictly series production parts (contrary to, for example, the Group A category where modifications are authorized provided minimum weight is respected), and that only identical original parts are accepted in replacement of a part that has become damaged or worn through use or accident.
16. The FIA adds that while the regulations applicable to Group A vehicles explicitly allow the crankshaft to be balanced, adjusted, reduced or modified through machining as long as the weight of the crankshaft conforms to the minimum weight indicated in the homologation form, the Group N regulations

do not include such provisions. Therefore, the FIA does not recognize “blue printing” as a practice that is permitted by the regulations, since it is not covered by the exemptions provided in Article 254. Moreover, as Article 254(4) states that “any modification that is not explicitly authorized is forbidden”, this practice can only be considered as being prohibited.

17. Finally, the FIA argues that there is no provision in the Group N regulations that authorizes a competitor to interpret the concept of “normal servicing” as including “blue printing”.

b) Conclusions of the Court

18. On the substance, the Court notes that, pursuant to Article 254(4) of Appendix J cited earlier, the principle which governs Group N rallies requires that cars participating in them remain “strictly series production models”, so that the vehicles participating in these competitions are subjected to a minimum number of mechanical transformations. This is the reason why any modification which is not expressly allowed is forbidden.
19. To this end, Articles 254(5) to 254(7) of the same Appendix list the authorized modifications. The Court observes that no element in this list refers to crankshafts.
20. Pursuant to Article 254(4) cited earlier, the following may also be carried out on Group N vehicles: works necessary for their normal servicing, or for the replacement of parts worn through use or accident.
21. The Court thus concludes that parts damaged through use or accident can only be transformed through mechanical works if these works are mentioned in the above-mentioned list or if they constitute normal servicing of the vehicle. Where this is not the case, competitors have no other option than to replace the part with an identical original part (Article 254-4, 4th paragraph).
22. The Court finds that such an interpretation clearly results from the above-mentioned provisions, and that this interpretation would not, as the Appellant argues, amount to an amendment of those provisions.
23. Therefore, in the present case, the question before the Court is whether or not the difference observed between the series crankshaft and the crankshaft used by the Appellant at the Event, results from a practice which constitutes normal servicing within the meaning of Article 254(4).
24. The Court notes from an e-mail dated 3 September 2009, from Mr Shinichiro Yoshizawa (Subaru) to Mr Ken Skidmore (Prodrive), produced by the Appellant, that the machining of the crankshaft carried out by the Appellant for the Event was carried out on areas of the component that are different from the areas that the manufacturer Subaru usually machines on its production

lines. This point has been observed by the Court at the hearing through examination of the physical components themselves (the crankshaft in question and a series crankshaft) as well as through examination of relevant (written and graphical) technical documents supplied by the parties.

25. It also transpired from the *viva voce* evidence that such machining could have the effect of improving the performance of the Appellant's vehicle, compared to the performance it would have had if it had been equipped with a series crankshaft. It further transpired that the machining of the crankshaft is not performed at each servicing of the engine.
26. Therefore, the Court considers that it is established that the machining, whatever the technical means used to carry it out, cannot be considered as constituting normal servicing work. Quite the contrary, by increasing the performance of the Appellant's vehicle, it contributed to infringing the principle mentioned earlier according to which Group N is strictly reserved to series production vehicles.
27. Moreover, the Court finds that the fact that the crankshaft under appeal, despite the mentioned machining, conforms to the framework set out in the homologation forms and in various technical documents from the manufacturer, notably with respect to its weight, is not relevant to the appreciation of the "normal servicing" nature of the transformation works it was subjected to.
28. The Court takes note of the Appellant's argument that these practices are used by other participants in Group N events. To support this allegation, the Appellant produced various declarations or attestations in the hope of proving the existence of an exception to the prohibition principle resulting from Article 254(4) cited above. Nevertheless, the Court finds that the fact that other crankshafts may have been subjected to this type of procedure without the FIA having ever taken a non-conformity decision, cannot satisfy the burden of proof that lies on the Appellant to prove that the said machining is not prohibited because it is carried out in the context of normal servicing of the car.
29. The Court concludes that therefore the Stewards have rightly considered that the crankshaft of vehicle N° 50 was not in compliance with Article 254 of Appendix J, cited above.

Second Plea (Alternative Plea) – Regarding the exclusion penalty

b) Arguments of the parties

30. The Appellant claims that, even in the event that the Court should consider that a breach was committed, the penalty of exclusion is disproportionate for various reasons. First of all, the competitor has no culpability for any non-compliance as the technical preparation of the engine was the sole responsibility of Prodrive.

Thus, the Appellant himself did not carry out any machining to the crankshaft or servicing of the engine. This fact was acknowledged by the Stewards in their decision. The Appellant claims that it would in fact be an innocent victim of Prodrive's mistake, and that there are no other reasonable steps the Appellant could have taken to achieve compliance with the regulations.

31. Second, the Appellant submits that there was no desire to cheat or intention to breach the regulations, as any technical preparation carried out by Prodrive was based on its genuine and honest belief that it was acting within the regulations. This was also acknowledged by the Stewards.
32. Third, the Appellant claims that account must be taken of the fact that the criteria and finishing processes used by Prodrive have been widely used throughout the motor sport industry in the preparation of Group N engines for a long time – in Prodrive's case for 30 years.
33. The Appellant also mentions the difference between the concepts of responsibility and culpability, and refers specifically to case ICA 18/2009.
34. Finally, the Appellant notes that the penalty of exclusion is not a mandatory penalty under the regulations and expressly refers to a recent case in which non-compliance with the applicable regulations did not result in exclusion of the competitor. It suggests that a reprimand and/or a reasonable financial penalty would be fairer and more proportionate.
35. With respect to the responsibility of the Appellant, the FIA argues that Article 30.2.1 of the Sporting Regulations of the FIA Production World Rally Championship stipulates that it is the responsibility of the competitor to prove, at any moment during the event, that its car is in conformity. In addition, Article 123 of the International Sporting Code, which states that the entrant is responsible for all acts or omissions on the part of its driver, mechanics or passengers, demonstrates that the sporting responsibility to present a vehicle that is in conformity with the regulations rests with the competitor alone.
36. The FIA further contends that, once non-conformity has been established, it is irrelevant whether the breach was intentional or not. Nor is it relevant that the infringement is noted as potentially being industry practice.
37. The FIA claims that any established case of non-conformity is liable to a sanction, as the principle of sporting equity has been breached. For these reasons, the Contested Decision must be confirmed.

b) Conclusions of the Court

38. Even though it considers the FIA's analysis to be founded, in particular with respect to the interpretation of the competitor's responsibility, the Court, taking account of the particular circumstances of this case, finds that the sanction

pronounced by the Stewards is to be lightened by substituting the exclusion from the final classification of the Event with a drop to the last place in the classification of the Event.

ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Confirms the Contested Decision insofar as it finds that Article 254 of Appendix J to the International Sporting Code has been breached by the Appellant;**
- 3. Quashes the Contested Decision insofar as it excludes the Appellant from the final classification of the Event;**
- 4. Decides to impose upon the Appellant a drop to the last place of the classification of the Event;**
- 5. Leaves it to the Sporting Authority to draw the consequences of the present decision;**
- 6. Leaves it to the Appellant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 6 October 2009

The President